

STATE OF MINNESOTA

IN SUPREME COURT

Court File No. A06-1508

OFFICE OF  
APPELLATE COURTS

AUG 10 2006

FILED

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Louis H. Reiter,

Petitioner,

vs.

Mary Kiffmeyer, individually and as  
Secretary of State of Minnesota

Respondent.

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**PETITION FOR AN  
ORDER TO SHOW  
CAUSE PURSUANT TO  
MINN. STAT. §204B.44**

Petitioner, Louis H. Reiter, states and alleges as follows:

**JURISDICTION**

1. This action concerns an error that is about to be made by Respondent in the preparation of the official ballot for the primary election to be held on September 12, 2006 for the purpose of selecting nominees for the office of Representative in Congress from Minnesota's First Congressional District, by wrongfully including the name of Gil Gutnecht on said ballot.
2. This Court has original jurisdiction over this matter under Minnesota Statutes § 204B.44.

## **PARTIES**

3. Petitioner, Louis H. Reiter, is an individual residing at 7437 75<sup>th</sup> Street NE, Elgin, MN 55932. He is a qualified and eligible voter in Minnesota's First Congressional District, as defined by Minnesota election law.

4. Respondent Mary Kiffmeyer, is the duly elected and acting Secretary of State of the State of Minnesota, and is charged under Minnesota Law with properly supervising the primary election ballot for the nomination of candidates for election to the office of Representative in Congress in the First Congressional District. Respondent wrongfully and unlawfully accepted an Affidavit of Candidacy for the September 12, 2006 primary election to nominate candidates in the First Congressional District from Gil Gutnecht without his having paid the filing fee required by Minn. Stat. § 204B.11.

## **FACTS**

5. On or about July 4, 2006, the statutory fourteen day filing period opened for filing for nomination at the September 12, 2006 primary for the Office of Representative in Congress from Minnesota's First Congressional District.

6. During the filing period and specifically on July 5, 2006, Respondent personally accepted an Affidavit of Candidacy from Gil Gutnecht without his having paid the three hundred dollar (\$300) filing fee required by Minn. Stat. § 204B.11 subd. 1.

7. On the same date Respondent wrongfully and unlawfully personally and in her official capacity issued a receipt to Gil Gutnecht for a nominating petition in lieu

of filing fee. A true and correct copy of said receipt is attached hereto as Exhibit A and incorporated herein.

8. One other person has filed an affidavit of candidacy for the Republican nomination for First District Representative in Congress and paid the required filing fee.

9. On information and belief no other candidate for partisan primary nomination of a major political party has failed to file the required filing fee with the Respondent.

10. Minn. Stat. Section 211B.08 subd. 1 requires that persons signing nominating petitions in lieu of filing fees do so within the fourteen day filing period.

11. The nominating petition accepted by the Respondent from Gil Gutnecht in lieu of filing fee is not valid because it was signed by less than three hundred (300) qualified voters during the statutory fourteen day filing period as required by law.

12. Unless otherwise ordered, Respondent who is a political supporter of Gil Gutnecht will wrongfully and unlawfully place his name on the primary election ballot scheduled to be held September 12, 2006.

#### **CLAIM FOR RELIEF**

Wherefore the Petitioner respectfully requests an order of this Court pursuant to Minn. Stat. §204B.44 directing that the Respondents omit Gil Gutnecht's name from the

primary election ballot for the Office of Representative in Congress for the First Congressional District to be held on September 12, 2006.

August 9, 2006

Alan W. Weinblatt

Alan W. Weinblatt, Atty. Reg. No. 115332  
Luke M. Kuhl, Atty. Reg. No. 0337316  
**WEINBLATT & GAYLORD, PLC**  
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111 East Kellogg Boulevard  
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**ATTORNEYS FOR PETITIONER**

State of Minnesota    )  
                                  )ss  
County of Olmstead )

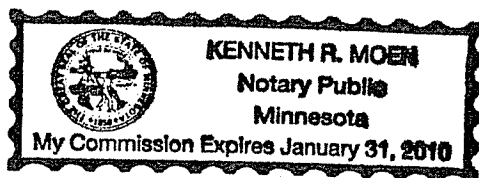
Louis H. Reiter, being first duly sworn, deposes and says that I am the Petitioner in the within matter. I have reviewed the attached Petition for an Order to Show Cause Pursuant to Minn. Stat. §204B.44 and find it to be true and correct to the best of my knowledge.

Louis H. Reiter

Louis H. Reiter, Petitioner

Subscribed and sworn to before me  
this 9<sup>th</sup> day of August, 2006.

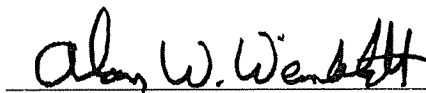
Kenneth R. Moen  
Notary Public



**Acknowledgment Required Under  
Minn. Stat. § 549.211**

The Petitioner by his undersigned attorney hereby acknowledge that sanctions may be imposed pursuant to Minn. Stat. § 549.211.

August 9, 2006



Alan W. Weinblatt, Atty. Reg. No. 115332

Luke M. Kuhl, Atty. Reg. No. 0337316

**WEINBLATT & GAYLORD, PLC**

Suite 300 Kellogg Square

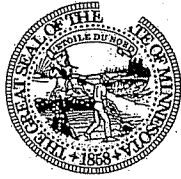
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**ATTORNEYS FOR PETITIONER**



Office of the Minnesota  
Secretary of State

Receipt for Petition  
2006 State General Election

Instructions: All items must be completed before receipt is issued.

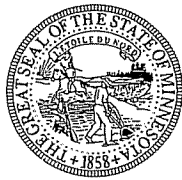
Received:

One Non Petition in lieu of filing fee petition containing 197 pages.  
Type of Petition Total Number of Pages

Date filed: 7-5-06

Submitted by: Nels T. Pierson III  
Name  
P.O. Box 6428  
Address  
Rochester, MN 55903  
(507) 252-1450  
Telephone

Received by: Mary Kufner 7-5-06  
Signature Date



**Office of the Minnesota  
Secretary of State**

00011  
Filing # \_\_\_\_\_  
Cash/Check # Petition  
Amount \$ \_\_\_\_\_

# Affidavit of Candidacy

All information on this form is available to the public. Information provided will appear on the Secretary of State's website at [www.sos.state.mn.us](http://www.sos.state.mn.us).

**Note:** If filing for partisan office and not a major party candidate, you must file both an affidavit of candidacy and a nominating petition: “Candidates for any partisan office who do not seek the nomination of a major political party shall be nominated by nominating petition as provided in sections 204B.07 and 204B.08, and . . . shall file an affidavit of candidacy as provided in section 204B.06.” (Minn. Stat. section 204B.03).

Please print or type.

Name (as it will appear on the ballot): Gil Gutknecht  
Office Sought: U.S. House of Reps. District #: 1  
For Partisan Office Provide Political Party or Principle: Republican  
For Judicial Office Provide Name of Incumbent: \_\_\_\_\_

**Legal Residence Address**  
Street Address: 3936 NW Birmingham Lane  
City: Rochester State: MN Zip: 55901

**Campaign Contact Information**  
Street Address: P.O. Box 6428  
City: Rochester State: MN Zip: \_\_\_\_\_  
Website: www.gilg.org Email: gil@gilg.org  
Phone Number: ( 800 ) 756 1994

For all offices, I swear (or affirm) that this is my true name or the name by which I am generally known in the community.

If filing for a state or local office, I also swear (or affirm) that:

- I am eligible to vote in Minnesota;
- I have not filed for the same or any other office at the upcoming primary or general election;
- I am, or will be on assuming office, 21 years of age or more;
- I will have maintained residence in this district for at least 30 days before the general election; and
- If a major political party candidate, I either participated in the party's most recent precinct caucuses or intend to vote for a majority of that party's candidates at the next general election.

If filing for one of the following offices, I also swear (or affirm) that I meet the requirements listed below:

- **United States Senator** - I will be an inhabitant of this state when elected and I will be at least 30 years old and a citizen of the United States for not less than nine years on the next January 3rd, or if filled at special election, within 21 days after the election.
- **United States Representative** - I will be an inhabitant of this state when elected and I will be at least 25 years old and a citizen of the United States for not less than seven years on the next January 3rd, or if filled at special election, within 21 days after the election.
- **Governor or Lieutenant Governor** - I will be at least 25 years old on the first Monday of the next January and a resident of Minnesota for not less than one year on election day. I am filing jointly with \_\_\_\_\_.
- **Supreme Court Justice, Court of Appeals Judge, District Court Judge, or County Attorney** - I am learned in the law and licensed to practice law in Minnesota. My Minnesota attorney license number is \_\_\_\_\_.
- **State Senator or State Representative** - I will be a resident of Minnesota not less than one year and of this district for six months on the day of the general or special election.
- **County Sheriff** - I am a licensed peace officer in Minnesota. My Board of Peace Officer Standards and Training license number is \_\_\_\_\_.
- **School Board Member** - I have not been convicted of an offense for which registration is required under Minnesota Statutes, section 243.166.
- **County, Municipal, School District, or Special District Office** - I meet any other qualifications for that office prescribed by law.

Subscribed and sworn before me this

5 day of July 2006  
 Mary Keffner  
 Notary public or other officer empowered to  
 take and certify acknowledgements.

(Notary stamp)  
**EXHIBIT B**

STATE OF MINNESOTA  
IN SUPREME COURT

Court File No. \_\_\_\_\_

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Louis H. Reiter,

Petitioner,

vs.

Mary Kiffmeyer, individually and as  
Secretary of State of Minnesota

Respondent.

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**MEMORANDUM OF  
LAW IN SUPPORT  
PETITION FOR AN  
ORDER TO SHOW  
CAUSE PURSUANT TO  
MINN. STAT. §204B.44**

This Petition raises the legal issue of whether a candidate for elective office who voluntarily chooses to avoid paying the statutory filing fee to file for office may lawfully substitute a petition in lieu of filing fee with signatures secured prior to the opening of the statutory filing period.

There are no disputed facts. Gil Gutnecht filed to run as a candidate in the 2006 Republican primary election for the office of Representative in Congress from the First Congressional District. The statutory fourteen day filing period for seeking access to and a place on the primary election ballot opened on July 4, 2006 and closed on July 18, 2006. Minn. Stat. Section 204B.09

Gil Gutnecht filed his Affidavit of Candidacy on July 5, 2006, (Exhibit B) but did not pay the mandatory statutory \$300 filing fee set forth in Minn. Stat. Section 204B.11 subd. 1(a). Petitioner's counsel has been advised by the Secretary of State's office staff that Gil Gutnecht is the only major political party candidate to file his affidavit of candidacy with that office who did not pay the required filing fee.



Instead of paying the filing fee Gil Gutnecht purported to file a nominating petition in lieu of filing fee. Respondent, personally and in her official capacity gave him a receipt for that nominating petition in lieu of filing fee. (Exhibit A attached hereto) Gutnecht's nominating petition in lieu of filing fee contains the names of less than one thousand (1,000) persons who signed the petition on or after July 4, 2006 (i.e. the opening date of the filing period). An examination of the Gutnecht nominating petition in lieu of filing fee shows that (a) it was signed by approximately three hundred (300) persons during the period beginning July 4, 2006 (b) most persons signed the petition on March 7, 2006 and (c) some persons signed it as early as February 7, 2006.

Affidavit of Avinash Viswanathan

It is Petitioner's belief that signatures on a nominating petition in lieu of filing fee dated prior to July 4, 2006 are invalid. If so, the Gutnecht petition in this instance does not contain the minimum number of signatures (i.e. 1,000) required by the statute (Minn. Stat. 204B.11 subd. 2 (b)) to constitute a valid petition in lieu of filing fee for a congressional office. Therefore, Gil Gutnecht's name should be ordered stricken from the September 12, 2006 primary election ballot.

## ARGUMENT

### A. Jurisdiction

This Court has original jurisdiction of this Petition by virtue of Minn. Stat. Section 204B.44 which, in pertinent part provides:

Any individual may file a petition in the manner provided in this section for the correction of any of the following errors, omissions or wrongful acts which have occurred or are about to occur:

(b) any other error in preparing or printing any official ballot

Petitioner is a qualified voter residing in the First Congressional District. Respondent is the election official charged with creating the 2006 primary election ballot and with the responsibility for issuing the certificate of nomination to the primary election winner. Minn. Stat. Section 204B.09 subd. 1, 204C.40

B. A Nominating Petition in Lieu of Filing Fee Must Be Signed During the Statutory Period

Nominating petitions must be signed during the period when petitions may be filed. Minn. Stat. Section 204B.08 subd. 1. Nominating petitions must be filed for federal offices not more than seventy (70) days nor less than fifty-six (56) days before the state primary. In 2006 the state primary will be held on September 12, 2006. Hence nominating petitions including those in lieu of filing fee must be signed and filed during the period between July 4 and July 18, 2006. The nominating petition in lieu of filing fee in this case was filed July 5, 2006. Exhibit A was filed simultaneously with Gil Gutnecht's Affidavit of Candidacy (Exhibit B).

Minnesota Statute Section 204B.11 subd. 2 provides that a nominating petition filed pursuant to Section 204B.08 and 204B.09 is effective as a petition in place of a filing fee if the nominating petition so informs the signers that it will be used for that additional purpose.

In this case, most of the signatures on the Gil Gutnecht nominating petition in lieu of filing fee predate the fourteen day filing period. Indeed, the largest group of signatures are dated March 7, 2006, nearly four months before the Gil Gutnecht's Affidavit of Candidacy was filed. (Affidavit of Avinash Viswanathan)

Petitioner respectfully submits that if four month old signatures may be used in lieu of paying a filing fee, Gutnecht could just as easily have used four year old signatures. Signatures dated on July 3, 2006 have no greater validity under the terms of Sections 204B.08 subd. 1, 204B.09 subd. 1 and 204B.11 subd. 2 than do signatures dated July 3, 2002 or July 3, 1996.

If there is no temporal requirement as to when the petition in lieu of filing fee must be signed, then a candidate may seek those petition signatures in August, 2006 for use in the 2008 election cycle or for any election thereafter. Further, if Respondent is allowed to count signatures secured before the fourteen day filing period, there is nothing to prevent the use of those February-June signatures in 2006 and again in 2008, 2010 and thereafter. Indeed signatures secured in 2006 over and above the number needed in lieu of filing fee (i.e. 1,000 for Representative in Congress) could be held “in reserve” for use in any subsequent election. To avoid this arbitrary and ridiculous result the legislature clearly adopted the temporal provision of Minn. Stat. Section 204B.08 subd. 1. It is applicable to all petitions. Minn. Rules Chapter 8205 Parts 1010 and 1030 (attached)

The Respondent has already recognized the applicability of this rule to petitions in lieu of filing fee in 4 ways. First, she personally described the Gutnecht petition as a “nominating petition in lieu of filing fee”. As such it is subject to the temporal requirements of Section 204B.08 subd. 1.

Second, the Secretary of State adopted Minn. Rule 8205.1010 and made it applicable to “...any election in this state...” M.R. 8205.1010 subpart 1. Included in the items required of any election petition is that:

“Each signature line must have a space for the date of signature...”

M.R. 8205.1010 subpart 2(H)

There would be absolutely no reason for requiring a date of signature if there was no temporal requirement for signatures on a petition in lieu of filing fee.

Third, the petition form itself makes the rule applicable. The importance of this rule to the administration of the ballot qualification process is critical enough for the Respondent to refer to it specifically on every page of the petition form that she has created pursuant to law and to print a date blank on every page of her form.

Finally Respondent's rules require that every person signing any petition complete the signature date. Minn. Rules Part 8205.1030 subpart 2. (attached)

The Minnesota legislature intended that the temporal signing requirement for nominating petitions apply to petitions in lieu of filing fee. In 1975 the Minnesota Legislature revised and recodified statutes relating to elections generally. 1975 Minn. Laws ch. 5 (hereinafter "Chapter 5"). In the course of that recodification, it also re-adopted the statutory provision requiring that nominating petitions be "signed and filed during the period allowed by law for the filing of affidavits of candidacy." Chapter 5, Section 20. This temporal signing requirement was first adopted in 1961. 1961 Minn. Laws. Ch. 606, Section 19. The Governor approved Chapter 5 on February 28, 1975 and it went into effect the next day. Chapter 5, Section 136. Approximately ten weeks later, the Legislature amended Chapter 5 to provide for a "Petition in Lieu of Filing Fee." 1975 Minn. Laws Ch. 130, Section 1 (hereinafter "the Amendment") (copy attached). The governor approved the Amendment on May 15, 2005. *Id.*

When the Legislature passed the Amendment, it was aware of the Chapter 5 Section 20 requirement and clearly intended that the temporal signing requirement it had just re-adopted would also apply to petitions in lieu of filing

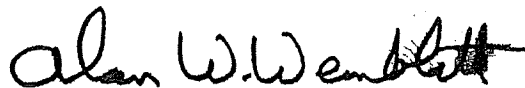
fee. Indeed Chapter 5 is referenced twice in the Amendment. Section 1 of the Amendment begins: "Laws 1975, Chapter 5, Section 15, is amended...." The Legislature was also specifically aware of Chapter 5, Section 20, regarding the temporal signing requirement for nominating petitions, when it passed the Amendment. Chapter 5, Section 20 is specifically referenced in the final paragraph of the Amendment.

C. Conclusion

Because the Gutnecht nominating petition is lieu of filing fee contains only two hundred ninety (290) signatures dated during the July 4 - July 18, 2006 filing period, it is insufficient. Without a legally sufficient filing fee or petition in lieu thereof, Gutnecht's name must be stricken from the primary ballot. Respondent should be so ordered.

Respectfully submitted,

August 9, 2006



Alan W. Weinblatt, Atty. Reg. No. 115332

Luke M. Kuhl, Atty. Reg. No. 0337316

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**ATTORNEYS FOR PETITIONER**

Westlaw

MN ADC 8205.1010

Minnesota Rules, part 8205.1010

Minn. R. 8205.1010

MINNESOTA RULES  
CHAPTER 8205  
SECRETARY OF STATE  
PETITIONS  
GENERAL REQUIREMENTS

Current with amendments adopted through March 13, 2006

8205.1010 FORM OF PETITIONS.

Subpart 1. Applicability. This part applies to any petition required for any election in this state, including nominating petitions, recall petitions, and proposed recall petitions.

Subp. 2. General form requirements. Petitions must be prepared in accordance with items A to I.

A. A petition must be prepared on paper no larger than 8-1/2 inches wide and 14 inches long. The signer's oath and the signature lines must be on the same side of the paper.

B. The language on the petition must be printed in as large as possible but no smaller than 8-point type.

C. Each petition page must have a short title describing the purpose of the petition.

D. Each petition page must have a statement summarizing the purpose of the petition.

E. If the purpose of the petition is to put a question on the ballot, each petition page may have a statement of 75 words or less summarizing the ballot question.

F. Each petition page must have a signer's oath in 12-point bold type. If the form of the signer's oath is not specified by statute, the following oath must be used: "I swear (or affirm) that I know the contents and purpose of this petition and that I signed this petition only once and of my own free will."

G. Each petition page must include the following statement immediately above the signature lines: "All information must be filled in by person(s) signing the petition unless disability prevents the person(s) from doing so."

H. Each petition page must have no more than 20 signature lines. The signature lines must be consecutively numbered. Each signature line must have space for the date of signature; a signature; and each signatory's year of birth; printed first, middle, and last name; and residence address, municipality, and county.

I. Each petition page must include the following statement: "All information on this petition is subject to public inspection."

Statutory Authority: MS s 204B.071; 211C.03; 211C.04; 211C.06

ATTACHMENT 1

Westlaw.

MN ADC 8205.1030  
Minnesota Rules, part 8205.1030  
Minn. R. 8205.1030

MINNESOTA RULES  
CHAPTER 8205  
SECRETARY OF STATE  
PETITIONS  
GENERAL REQUIREMENTS

Current with amendments adopted through March 13, 2006

8205.1030 SIGNING PETITIONS.

Subpart 1. Applicability. This part applies to any petition required for any election in this state, including nominating petitions, recall petitions, and proposed recall petitions.

Subp. 2. Required information. The person signing the petition shall complete the signature date, name, year of birth, and residence address lines on the petition.

Subp. 3. Signing by disabled person. A person physically unable to complete the petition may ask another for assistance.

Subp. 4. Signing only once. A person may sign a petition only once.

Statutory Authority: MS s 204B.071; 211C.03; 211C.04; 211C.06

History: 25 SR 616  
MN ADC 8205.1030  
END OF DOCUMENT

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ATTACHMENT 2

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**CHAPTER 130—S.F.No.72**

[Coded]

*An act relating to elections; permitting the use of a petition in lieu of filing fees; amending Laws 1975, Chapter 5, Section 15, by adding a subdivision.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Laws 1975, Chapter 5, Section 15, is amended by adding a subdivision to read:

**[202A.25]** Subd. 1a. PETITION IN LIEU OF FILING FEE. A candidate at the time of filing his affidavit may present a petition in lieu of the filing fee. The petition shall be signed by a number of persons, qualified to vote in the election district in which the candidate is filing, as follows:

(a) If for the office of governor, lieutenant governor, attorney general, state auditor, state treasurer, secretary of state, judge of the supreme court or senator in congress, 2,000;

(b) If for the office of representative in congress, 1,000;

(c) If for the office of representative or senator in the legislature or district, county, probate or municipal judge, 500;

(d) If for any other office for which a filing fee is prescribed by law, municipal charter or ordinance, 500 signatures or 5 percent of the total number of persons voting in the municipality, ward or other election district at the last preceding municipal general election, whichever is less.

The petition authorized by this subdivision may not be used to fulfill the requirements of Laws 1975, Chapter 5, Sections 18 to 22, relative to nominating petitions.

Approved May 15, 1975.

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**CHAPTER 131—S.F.No.93**

*An act relating to juvenile court; providing for payment of the costs of foster care for delinquent children; amending Minnesota Statutes 1974, Section 260.251, Subdivision 1a.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Changes or additions indicated by underline deletions by ~~strikeout~~